



Comments of the Regulatory Action Center

Re: Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as Amended by the Cable Television Consumer Protection and Competition Act of 1992
Second Further Notice of Proposed Rulemaking – MB Docket No. 05-311

September 18, 2018

The Regulatory Action Center at FreedomWorks Foundation is dedicated to educating Americans about the impact of government regulation on economic prosperity and individual liberty. FreedomWorks Foundation is committed to lowering the barrier between millions of FreedomWorks citizen activists and the rule-making process of government bureaus to which they are entitled to contribute.

On behalf of over 5.7 million activists nationwide, FreedomWorks Foundation appreciates the opportunity to offer these comment in support of the proposed Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as Amended by the Cable Television Consumer Protection and Competition Act of 1992 as set out in the Second Further Notice of Proposed Rulemaking – MB Docket No. 05-311. The proposal limits the ability of local governments to erect barriers to competition in the cable television and internet service provider market.

The proposal generally limits the ability of local franchising authorities (LFAs) to extract unreasonable rents from cable providers. The proposal further constrains LFA regulatory authority almost exclusively to cable television service, whereby excluding non-cable services from their regulatory reach.

Sufficient competitive pressure on firms is the ultimate consumer protection. When consumers cannot reasonably switch between service providers, there is a natural tendency for consumers to demand additional regulation of the existing providers. Such a situation, a heavily regulated, non-competitive market, generally leaves consumers little better-off than prior to the imposition of the regulations—and always worse off than a competitive, lightly-regulated market. This is because the regulatory and government planning systems required to police non-competitive markets not only dissuade new market entrants in and of themselves but are further susceptible to a number of public choice issues, particularly regulatory capture and rent seeking.

Regulatory capture results when regulatory agencies, either purposefully or naturally, are influenced or controlled by the interests they regulate. Regulators may either be bribed or otherwise coerced by regulated interests. More commonly, regulatory bodies and regulated interests often look to one another for advisement and potential personnel, progressively intertwining the regulator and the regulated. In either scenario, the regulatory agency becomes a tool of the regulated firms with the power to direct the market in their favor to include exclusion of new competition.

Rent seeking, while a symptom of regulatory capture that can favor the regulated industry, can also occur when the regulator exerts their power over the regulated industry to

achieve ends not necessarily related to consumer protection. The rents extracted from the regulated industry often create costs sufficient to dissuade new entrants to the market.

Regardless of the particular effect of regulation, or combination thereof, that is limiting competition, the result is that regulated firms become more responsive to government. Firms lack incentive to invest or innovate under the insulation provided by the regulatory system. As a result, consumers are necessarily worse off than they would be in a competitive and lightly-regulated market.

German to this particular proposal, LFAs are regulatory systems susceptible to and, in many instances, guilty of the issues outlined above. LFAs control access to public rights-of-way necessary to the deployment of cable television network infrastructure. Because of this, the law limits the ability of LFAs to engage in behavior that inhibits sufficient competition in local cable markets.

This proposal clarifies and strengthens these limits. Under this proposal, LFAs would generally not be able to coerce cable companies to provide various in-kind contributions to the local government above and beyond the cap on franchise fees set in statute. These cost of these in-kind contributions would also count towards a given company's franchise fees.

The proposal would also almost entirely exclude non-cable television services provided by cable companies from the reach of LFAs. This would ensure cable companies do not face additional regulatory hurdles or costs associated with providing services, such as internet access, using their existing infrastructure. As technology continues to evolve and provide more options to consumers for broadband internet access, cable companies will be unable to compete with other firms utilizing different technologies if they are subject to an additional layer of regulation in LFA, and all the associated costs, that these other firms are not.

In sum, this proposal would ensure LFAs do not abuse their authority and blunt crucial competitive forces in the cable television market and further prevent LFAs from limiting the ability of cable providers to compete in the broader non-cable services market, to include broadband internet. For these reasons, we enthusiastically support this proposal.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Patrick Hedger', with a stylized, flowing script.

Patrick Hedger
Director of Policy
FreedomWorks Foundation
111 K Street NE, Suite 600
Washington, DC, 20002